87-216

No. _____

Supreme Court, U
FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

THE CITY OF FONTANA, a Municipal Corporation; ROBERT MEJIA, LARRY SMITH, NATHAN A. SIMON, CHARLES A. KOEHLER, BEN ABERNATHY, BILL FREEMAN, DONALD F. DAY, WILLIAM KRAGNESS, JACK RATELLE, JOHN M. RAGER, and KATHY WILSON,

Petitioners,

vs.

SONJA RENEE SMITH, as Administratrix of the Estate of RUFUS A. SMITH, SR., Deceased, as Guardian Ad Litem for the Minor Children of the Deceased, and Individually; RUFUS ANTHONY SMITH, JR., Individually; and MARCUS SMITH, a Minor; NETRA SMITH, a Minor; ANTHONY SMITH, a Minor; JARREN SMITH, a Minor; SHERRI SMITH, a Minor; ARKILLIUS SMITH, a Minor; and TASHIEKA SMITH, a Minor,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether family members, other than the parents, of a decedent who died as a result of governmental action are deprived of a cognizable Constitutional interest thereby.

2. What is the nature of the Constitutional deprivation suffered by a family member of a decedent who died as a result of governmental action.

LIST OF PARTIES AND RULE 28.1 INFORMATION

The parties to the California proceedings below were:

Petitioners, CITY OF FONTANA, a municipal corporation; ROBERT MEJIA and LARRY SMITH, police officers of the City of Fontana; NATHAN A. SIMON, Mayor of the City of Fontana; CHARLES A. KOEHLER, Mayor Pro Tem of the City of Fontana; BEN ABERNATHY, Chief of Police of the City of Fontana; BILL FREEMAN, DONALD F. DAY, and WILLIAM KRAGNESS, Councilmembers of the City of Fontana; JACK RATELLE, City Manager of the City of Fontana; JOHN M. RAGER, City Attorney of the City of Fontana; and KATHY WILSON, Personnel Director of the City of Fontana; and

Respondents, Sonja Renee Smith, an adult child of the decedent, individually; as Administratrix of the Estate of Rufus A. Smith, Sr.; and as Guardian Ad Litem for Marcus Smith, Arkillius Smith, Netra Smith, Anthony Smith, Jarren Smith, Sherri Smith, and Tashieka Smith, the minor children of the decedent; and Rufus A. Smith, Jr., an adult child of the decedent, individually.

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No._____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

THE CITY OF FONTANA, a Municipal Corporation; ROBERT MEJIA, LARRY SMITH, NATHAN A. SIMON, CHARLES A. KOEHLER, BEN ABERNATHY, BILL FREEMAN, DONALD F. DAY, WILLIAM KRAGNESS, JACK RATELLE, JOHN M. RAGER, and KATHY WILSON,

Petitioners,

vs.

SONJA RENEE SMITH, as Administratrix of the Estate of RUFUS A. SMITH, SR., Deceased, as Guardian Ad Litem for the minor children of the Deceased, and individually; RUFUS ANTHONY SMITH, JR., individually; and MARCUS SMITH, a minor; NETRA SMITH a minor; ANTHONY SMITH, a minor; JARREN SMITH, a minor; SHERRI SMITH, a minor; ARKILLIUS SMITH, a minor; and TASHIEKA SMITH, a minor,

Respondents.

PETITION FOR WRIT OF CERTIORARI

Petitioners, THE CITY OF FONTANA, a municipal corporation, ROBERT MEJIA, LARRY SMITH, NATHAN A. SIMON, CHARLES A. KOEHLER, BEN ABERNATHY, BILL FREEMAN, DONALD F. DAY, WILLIAM KRAGNESS, JACK RATELLE, JOHN M. RAGER, and KATHY WILSON, pray that a Writ of Certiorari issue to review the decision of the United States Court of Appeal for the Ninth Circuit, granting, in part, Respondents' Appeal. Respondents were seeking reversal of an order of dismissal of the United States District Court for the Central District of California, entered against them on August 23, 1982, dismissing the Complaint in its entirety.

JURISDICTION

Respondents timely filed a Notice of Appeal from the Order of Dismissal of the District Court. The Court of Appeal filed its Opinion on January 6, 1987. Petitioners' Petition for Rehearing En Banc was filed January 20, 1987. The Court of Appeal amended its Opinion on May 5, 1987 and July 7, 1987.

The jurisdiction of this Court is invoked under:

(a) Article 3, Section 2, Clause 2, United States Constitution; and

(b) 28 United States Code, Section 1254(1).

The Opinion and Amended Opinions of the Court of Appeal and the Order of

Dismissal of the District Court are filed under separate cover concurrently with this Petition as Appendices "A", "B", "D" and "I".

STATUTES INVOLVED

Amendment IV of the United States Constitution:

> "The right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated . . . ."
>
> (As Applied to the States)

Article XIV, Section 1, of the United States Constitution:

> ". . . nor shall any State deprive any person of life, liberty or property, without due process of law . . . ."

42 United States Code, Section 1981:

> "All persons within the jurisdiction of the United

States shall have the same right in every State . . . to the full and equal benefit of all laws and proceedings for the security of persons . . . as is enjoyed by white citizens . . . ."

42 United States Code, Section 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

42 United States Code, Section 1988:

"The jurisdiction in civil . . . matters conferred on the district courts by the provisions of this Title, and of Title 'CIVIL RIGHTS,' . . . for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in

> conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies . . . , the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil . . . cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause . . . ."

STATEMENT OF THE CASE

This is a petition seeking to delimit the extension of vicarious Constitutional protection provided to family members, other than parents, of a family member who died as a result of governmental action.

Rufus A. Smith, Sr., died as a result of gunshot wounds inflicted by Fontana police officers. Respondents, the minor and adult children of the decedent, filed suit in the United States District Court for the Central District of California pursuant to the Civil Rights Act. The District Court dismissed the complaint in its entirety on Petitioners' motion, on the basis that state tort law provided an adequate post-deprivation remedy.

The Ninth Circuit Court of Appeal, relying on this Court's decision in Daniels v. Williams, 474 U.S. 327, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986), held that

Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981), applies only to violations of procedural, and not substantive, due process.

The Court of Appeal further held that the children could assert violations of their personal substantive due process rights as a result of the death of their father. In doing so, the Court extended the relief provided to parents of children whose Constitutional rights are vicariously violated as a result of governmental action taken against the child, to children of a parent who suffered a constitutional deprivation as a result of

governmental action. The Court of Appeal thus extended the Constitutional protection afforded by this Court to parents of minor children to protect the parents' interest in the custody and upbringing of their children, to protect the interests of both minor and adult children in the "companionship and support" of a parent.

The Court of Appeal's decision below represents an unwarranted extension of the holding in Daniels v. Williams, supra, and exposes the federal courts to a potential flood of spurious "coattail" litigation brought by family members vicariously asserting a violation

of their constitutional rights as a result of governmental action taken against another family member.

HOW THE FEDERAL QUESTION WAS PRESENTED

Petitioners argued before the Ninth Circuit Court of Appeal that California post-deprivation tort remedies were sufficient to provide relief to Respondents, and therefore, based on Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981) and Rutledge v. Arizona Board of Regents, 660 F.2d 1345 (9th Cir. 1981) Respondents could not state a claim for relief under the Civil Rights Act.

REASONS TO GRANT THE WRIT

This Court has yet to address the question of whether the death of one family member as a result of governmental action deprives another family member of a cognizable Constitutional interest.

This Court has extended Constitutional protection to parents of children to vindicate the parents' Constitutional deprivations occurring as the result of governmental action taken against the children. The Courts of Appeal have broadened that protection to include Constitutional deprivations suffered by other family members, based on a number of different

rationales, to protect a variety of substantive interests.

That broadened protection has been inconsistently extended among the Circuits with respect to the identity of those additional family members whose Constitutional interests are protected, and the nature of the Constitutional deprivations suffered by them.

The Ninth Circuit, in the action below, has extended Constitutional protection by virtue of 42 U.S.C. Section 1983 to both the minor and adult children of a parent who died as a result of governmental action, based on a deprivation of the childrens'

liberty interest in the companionship and support of their parents.

This trend of providing vicarious Constitutional protection to family members based on governmental action taken against another family member has the effect of opening the floodgates to a deluge of spurious "coattail" litigation in the federal courts.

Thus, whether protection should further be extended to other family members for Constitutional deprivations resulting from the death of another family member as a result of governmental action, and the nature of the Constitutional

deprivations suffered thereby, is a substantial and important question meriting review and resolution by this Court.

CONCLUSION

For the foregoing succinct reasons, this Petition for Certiorari should be granted.

Dated: August 3, 1987

Respectfully submitted,

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Petitioners